

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgio	Team: Squad #2	CCRB Case #: 202005863	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/22/2020 12:40 AM	Location of Incident: § 87(2)(b)	Precinct: 70	18 Mo. SOL 2/22/2022	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 08/26/2020 1:39 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 08/26/2020 1:39 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Sidorskiy	14429	931988	PBBS SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Thomas Redmond	00000	948411	067 PCT
2. POM Christian Cayenne	02135	954620	120 DET
3. POM Frank Aliberti	30222	956377	GVSD Z1
4. SGT Alfred Foy	1329	954821	110 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Sidorskiy	Discourtesy: Police Officer Michael Sidorskiy spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Michael Sidorskiy	Discourtesy: Police Officer Michael Sidorskiy spoke discourteously to § 87(2)(b)	§ 87(2)(b)
C.POM Michael Sidorskiy	Abuse: Police Officer Michael Sidorskiy threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
D.POM Michael Sidorskiy	Abuse: Police Officer Michael Sidorskiy threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
E.POM Michael Sidorskiy	Untruthful Stmt.: Police Officer Michael Sidorskiy provided a false official statement to the CCRB.	§ 87(2)(b)

Case Summary

On August 26, 2020, § 87(2)(b) filed this complaint online via the CCRB website. The case was initially assigned to Inv. Kenneth Shelton before being reassigned to Inv. Rachel Murgio on May 6, 2021, upon Inv. Shelton's resignation from the Agency.

On August 22, 2020, at approximately 12:40 a.m., § 87(2)(b) and his friend § 87(2)(b) were outside § 87(2)(b) in Brooklyn. Police officers, including Police Officer Michael Sidorskiy of Patrol Borough Brooklyn South, attempted to arrest an unknown male in the area. The male ran, and the officers chased him. After attempting to chase the male, Police Officer Sidorskiy ran back to the area where § 87(2)(b) and § 87(2)(b) stood near § 87(2)(b) parked car. Police Officer Sidorskiy attempted to enter § 87(2)(b) car, mistaking it for his own, and § 87(2)(b) told him not to. Police Officer Sidorskiy began cursing and speaking discourteously to § 87(2)(b) and § 87(2)(b) (**Allegations A & B: Discourtesy – Word – § 87(2)(g)** Police Officer Sidorskiy also threatened § 87(2)(b) and § 87(2)(b) with the use of force, saying, "I'll smack the ugly off of you" (**Allegations C & D: Abuse of Authority – Threat of force (verbal or physical) – § 87(2)(g)** During his CCRB interviews on March 19, 2021, and July 29, 2021, Police Officer Sidorskiy provided false official statements (**Allegation E: Untruthful Statement – False Official Statement – § 87(2)(g)**

Body-worn camera (BWC) footage for this case, obtained from the BWCs of Police Officer Frank Aliberti, Police Officer Christian Cayenne, Lieutenant Thomas Redmond, Police Officer Sidorskiy, and Sergeant Alfred Foy, is located in IAs 45-50 (Board Review 01-06) and summarized in IA 51 (Board Review 07). § 87(2)(b) submitted a cellphone video, which is located in IA 2 (Board Review 08) and summarized in IA #22 (Board Review 09).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Michael Sidorskiy spoke discourteously to § 87(2)(b)

Allegation (B) Discourtesy: Police Officer Michael Sidorskiy spoke discourteously to § 87(2)(b)

On September 9, 2020, § 87(2)(b) provided a telephone statement (Board Review 10) and on September 24, 2020, he was interviewed via telephone (Board Review 11). The investigation was unable to obtain a statement from § 87(2)(b) Police Officer Sidorskiy was interviewed at the CCRB on March 19, 2021 (Board Review 12) and again on July 29, 2021 (Board Review 13).

§ 87(2)(b) stated that, after Police Officer Sidorskiy apparently mistakenly opened the door to § 87(2)(b) parked car and was told not to get into § 87(2)(b) car, Police Officer Sidorskiy walked a short distance away and began cursing at § 87(2)(b) and § 87(2)(b) § 87(2)(b) did not recall all of the statements that Police Officer Sidorskiy made but believed that he said something like, "Your mother can suck my dick," as well as several other statements about people who could "suck [his] dick." After the incident began, § 87(2)(b) began recording on his cell phone (see below).

Police Officer Sidorskiy's BWC footage from the incident (Board Review 04) captures the beginning of his interaction with § 87(2)(b) and § 87(2)(b) beginning at approximately timestamp 3:07. After Police Officer Sidorskiy opens the door to a car which apparently belongs to § 87(2)(b) § 87(2)(b) tells him that it is his car and not to enter. § 87(2)(b) does not raise his voice or use profanity. Police Officer Sidorskiy responds, "Where my shit at?" § 87(2)(b)

says, in a normal tone of voice, “What the fuck is wrong with you, man. Back up, back up.” Police Officer Sidorskiy raises his voice and says, “The fuck you talking to?” § 87(2)(b) says that he is talking to Police Officer Sidorskiy. At timestamp 3:18, there is another male voice in the background that asks Police Officer Sidorskiy “what the fuck” he thinks he is doing. Police Officer Sidorskiy says, “I’ll smack the ugly off of you.” Someone answers, “Man, fuck you!” Police Officer Sidorskiy then turns off his BWC. Prior to Police Officer Sidorskiy turning off his BWC, there is no indication of a crowd of several civilians surrounding him, and no civilians are captured making threats against him.

§ 87(2)(b) video (Board Review 08) begins after Police Officer Sidorskiy’s BWC ends, though it is unclear how much time passes between the end of the BWC and the beginning of § 87(2)(b) cellphone footage. It appears to capture Police Officer Sidorskiy saying, “...make your baby mother suck my dick,” as he walks away from § 87(2)(b) and approximately two people near him yell things like, “That’s why they left you,” “That’s why you’re walking,” “Go do your job,” “Fucking pussy,” and “Keep walking, dickhead.” There is no indication of a crowd of several civilians surrounding Police Officer Sidorskiy, and no civilians are captured making threats against Police Officer Sidorskiy.

Police Officer Cayenne’s BWC from the incident (video one of two) (Board Review 02) captures a subsequent interaction between Police Officer Sidorskiy, § 87(2)(b) and § 87(2)(b) a few minutes after their initial interaction, after Police Officer Sidorskiy has rejoined the other officers. When § 87(2)(b) and § 87(2)(b) approach Police Officer Sidorskiy and the other officers, they accuse Police Officer Sidorskiy of using offensive language and trying to get into § 87(2)(b) car. Unlike the initial interaction, during which § 87(2)(b) and § 87(2)(b) are calm and speaking in normal tones of voice, during this subsequent interaction, they appear to be angry and are speaking in elevated tones. At timestamp 9:34 into the video, Police Officer Sidorskiy can be seen and heard saying, “I don’t give a fuck, get away from me.” There do not appear to be additional civilians nearby besides § 87(2)(b) and the arrested individual who is in custody at the time. There are, however, several officers with Police Officer Sidorskiy at this point.

During his first CCRB interview, Police Officer Sidorskiy testified that when he arrived back to where the police cars had been parked, he noticed that his vehicle was gone and was then “surrounded” by approximately ten people, who called him “all types of names” and threatened him and his life. He did not recall whether he spoke to the civilians before they spoke to him, any specific statements made by the civilians, or how far away the people were while they spoke to him. Police Officer Sidorskiy did not remember making any response to the people and did not recall using any profanity.

When shown § 87(2)(b) video during his first interview, Police Officer Sidorskiy denied hearing himself say, “Suck my dick.” He denied recognizing the voice that made that statement and believed that the civilians were saying it to him.

During his second CCRB interview, Police Officer Sidorskiy stated that, upon his return to the location where his police vehicle was parked, he was “approached by approximately ten males that began... screaming at [him], surrounding [him].” He did not recall whether there were any civilians with whom he interacted prior to the ten males surrounding him. Police Officer Sidorskiy was asked if he said anything in response to the ten male civilians who surrounded him and said, “No, I don’t recall. No.” The males made threats against Police Officer Sidorskiy and came “very close” to him, though Police Officer Sidorskiy did not recall how close the males came to him. He did not recall whether the males completely surrounded him or were more on one side or another. Police

Officer Sidorskiy testified that he felt “really, really, really scared” for three seconds, then “automatically” walked across the street to get away from those who were surrounding him. When asked whether his interaction with the ten males began with them spontaneously surrounding him or if something occurred between him and the civilians before they began surrounding him, Police Officer Sidorskiy initially stated that he believed he had answered this question “many times.” He later stated that the civilians “were just yelling and screaming... profanity at me as soon as they saw me come back to the scene and they realized that I was by myself.” He did not recall whether any of the civilians articulated a reason why they were “screaming at” him. The civilians approached Police Officer Sidorskiy with their fists clenched and told him that he was all by himself and that they could hurt him.

Police Officer Sidorskiy did not recall whether he made any statements using profanity toward any of the civilians. He did not recall whether he used the word “dick” when speaking to civilians. When asked whether he ever used the word “shit” or “fuck” while interacting with civilians at the time and location of the incident, Police Officer Sidorskiy said, “Absolutely not.” Police Officer Sidorskiy was asked if he ever said, “Where my shit at” or “Where’s my shit at,” to civilians. He said “No,” then said, “I don’t recall that, I don’t recall ask- You know, I got surrounded, I was a victim in this... You could see that on any camera, so I don’t know where these questions are like, coming from.” Police Officer Sidorskiy did not recall whether he asked a civilian, “The fuck you talking to?” or “Who the fuck you talking to?” He was asked whether he ever said, “I don’t give a fuck, get away from me.” He initially asked the investigator to be more specific and then eventually answered, “Absolutely not.”

Police Officer Sidorskiy was asked if he ever commented on the physical appearances of any civilians. Police Officer Sidorskiy initially said, “Are you kidding me,” and then asked what the investigator meant by “appearance.” The investigator clarified that the question referred to how a civilian looked. Police Officer Sidorskiy said, “If you have to ask that question, then absolutely not.” He did not recall whether he ever told a civilian, “I’ll smack the ugly off of you.”

After making the above statement in his second CCRB interview, Police Officer Sidorskiy was shown his own BWC footage. The first segment he was shown was timestamps 3:04-3:20. He stated that the people could be seen surrounding him in the video. The investigator said that they would go back to the video to ensure that they understood what Police Officer Sidorskiy was referring to, and Police Officer Sidorskiy replied, “You know what I’m referring to.” The video was played again, and Police Officer Sidorskiy stated that the male in the black shirt shown in the video was one of the people who surrounded him and that this was the moment in the incident when he was surrounded. Police Officer Sidorskiy confirmed that he heard his own voice saying, “Where my shit at?” He was asked if there was a law enforcement purpose for this. Police Officer Sidorskiy said, “Ma’am. I’m surrounded by individuals. I’m by myself... I’m scared for my life... Okay? They’re using forceful language, I’ve got to get out of there, ASAP. Do you see me running away from there? From that situation, so it doesn’t get...escalated? Okay?” The investigator again asked Police Officer Sidorskiy to articulate what the reason was for saying “Where my shit at?”. His legal representative, Michael Delakas, stated that he believed that Police Officer Sidorskiy had sufficiently addressed this issue and refused to allow him to answer further.

Police Officer Sidorskiy was asked whose voice said, “The fuck you talking to?” and if it was his own voice. Before Police Officer Sidorskiy was able to respond, Michael Delakas stated that “The fuck you talking to?” was not said by Police Officer Sidorskiy. When the video clip was replayed and Police Officer Sidorskiy was asked if he could tell whether the statement was made in his voice, Michael Delakas said, “Yeah, it’s not your voice. Just say it’s not your voice.” Police Officer Sidorskiy then said, “That doesn’t sound like my voice.” He said that he did not recognize it as being his

voice and that all he could hear from the video was “people cursing...the man that approached me, clenching his fists and cursing.”

Police Officer Sidorskiy was shown his BWC footage from 3:10-3:21 and was asked whether it was his own voice saying, “I’ll smack the ugly off of you.” He said, “Ma’am, I hear people... screaming profanities at me... I don’t hear my voice. All I hear is people screaming and yelling at me, and me running away from the crowd, okay? So...to get myself out of there, I ran away. I see it in the video, but I do not remember right now what was said on that scene. That’s a very scary scene, as you can tell from that scene.” Police Officer Sidorskiy was asked if, having watched the footage, he recalled anything additional about anything he said to civilians at the location and time. He said, “I hear it in the video, but like I said, I don’t remember.” He later denied threatening a civilian with the use of force during the incident.

When shown Police Officer Cayenne’s BWC from the incident from timestamp 9:31-9:37, Police Officer Sidorskiy identified himself in the video and initially stated that he could not hear himself saying anything in this portion of video. He could only hear a civilian yelling. Police Officer Sidorskiy was later asked if he heard his own voice saying, “I don’t give a fuck, get away from me,” and the video was replayed from 9:31-9:37. Police Officer Sidorskiy denied that he said, “I don’t give a fuck,” and testified that he only said “something in substance of, ‘Get away from me’... There’s no cursing done by me.” He stated that the people who approached him § 87(2)(b) and § 87(2)(b) were the ones cursing.

Patrol Guide Procedure 200-02 instructs officers to maintain a higher standard of integrity than is generally expected of others and to value human life and respect the dignity of each individual. Officers are to render services with courtesy and civility (Board Review 22).

DAO-DCT Case #2015-15012 notes that in a dynamic situation over which an officer is attempting to gain control, an officer can be excused for using discourteous language that would otherwise be inappropriate (Board Review 17). However, language that serves no legitimate purpose but to belittle a civilian does not fall under this exception and is inappropriate.

Despite Police Officer Sidorskiy’s claims that he was surrounded by a crowd of ten males who cursed at and threatened him, the investigation was unable to find any evidence of such a situation occurring in either Police Officer Sidorskiy’s own BWC or in the video submitted by § 87(2)(b). Based on both the visual and audio components of the video, there was no apparent crowd at the time that Police Officer Sidorskiy first began using profanity by asking § 87(2)(b) “Where [his] shit [was] at,” though Police Officer Sidorskiy testified that his reason for using this phrase was that he was “scared for [his] life” since he was “surrounded by individuals... using forceful language.” Despite Police Officer Sidorskiy and his counsel’s claim that he did not say “The fuck you talking to,” the investigation determined based on a preponderance of the evidence that Police Officer Sidorskiy did indeed make this statement, as the voice saying this matched the voice Police Officer Sidorskiy identified as his own in the recording. At the time Police Officer Sidorskiy asked this question of § 87(2)(b) and § 87(2)(b) the only other voice heard speaking is that of § 87(2)(b) who was not raising his own voice and had made no threats against Police Officer Sidorskiy by that time. § 87(2)(g)

§ 87(2)(b) Likewise, there was no evidence of a crowd in front of or around Police Officer Sidorskiy when he threatened to “smack the ugly off of” civilians. Additionally, this phrase seems ill-chosen to gain control of or de-escalate a chaotic situation, which is one of the notable situations when the use of profanity and/or discourteous language by an officer discharging their duty can be excusable. Police Officer Sidorskiy’s apparent use of the phrase, “make your baby mother suck my dick,” as captured in § 87(2)(b) video, occurs when

Police Officer Sidorskiy is already in the process of “running away” and was already several yards away from where he claimed to have been surrounded by ten angry males. Based on the audio of this portion of video, it appears that there are approximately 3-4 individuals yelling at Police Officer Sidorskiy, but they do not make any threats against him that are captured in the video, and Police Officer Sidorskiy is already at least 2-3 car lengths from § 87(2)(b) and the other civilians when he turns back to make his statement. Police Officer Sidorskiy’s final captured use of discourteous language occurs when he is standing with a group of other officers, and there are only apparently two civilians speaking to him. Though Police Officer Sidorskiy denied saying, “I don’t give a fuck,” at this time, the figure in the video that he identified as himself can be both seen and heard saying this phrase. While § 87(2)(b) and § 87(2)(b) appear to be raising their voices to Police Officer Sidorskiy at this point, and § 87(2)(b) does verbalize threats, Police Officer Sidorskiy is no longer alone with civilians and could not provide another reason why he used this phrase at this time. § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Michael Sidorskiy threatened § 87(2)(b) with the use of force.

Allegation (D) Abuse of Authority: Police Officer Michael Sidorskiy threatened § 87(2)(b) with the use of force.

As previously mentioned, Police Officer Sidorskiy’s BWC from the incident captures Police Officer Sidorskiy’s voice saying, “I’ll smack the ugly off of you,” to civilians. There is no evidence of a crowd of ten males surrounding him at this point, as he alleged, and no voices can be heard making threats towards Police Officer Sidorskiy at this point in the incident. The only voice heard cursing is § 87(2)(b) in response to Police Officer Sidorskiy’s statements which are discussed above.

As discussed above, before being shown his own BWC footage, Police Officer Sidorskiy said that he did not recall whether he ever told a civilian, “I’ll smack the ugly off of you.” Once he was shown the relevant portion of his own BWC footage, Police Officer Sidorskiy denied that he heard his own voice in this portion of the video and stated that he only heard others “screaming and yelling” at him while he “ran away.”

Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person or otherwise protect life. In any circumstances, an application or use of force must be reasonable under the given circumstances. Some criteria to consider in determining whether the use of force is reasonable are the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; the number of subjects in comparison to the number of MOS; and the presence of a hostile crowd or agitators.

Despite Police Officer Sidorskiy’s claims that there was a hostile crowd of ten males, the investigation was unable to observe any evidence in the video footage of this being the case. The video and audio evidence available in this case shows no presence of a hostile crowd when Police Officer Sidorskiy threatened § 87(2)(b) and § 87(2)(b) with the use of force. No bystanders appeared to be making or posing any threats to Police Officer Sidorskiy at the time of his threatening statement, and Police Officer Sidorskiy does not appear to be surrounded, as he claimed, at any point. § 87(2)(g)

Allegation (E) Untruthful Statement: Police Officer Michael Sidorskiy provided a false official statement to the CCRB.

As discussed above, Police Officer Sidorskiy denied making statements such as “The fuck you talking to,” “make your baby mother suck my dick,” and “I don’t give a fuck,” despite being shown video footage of himself saying these things. He also denied threatening civilians with the use of force, though this was also captured on his own BWC. Police Officer Sidorskiy attempted to justify his use of the discourteous language he did acknowledge (“Where my shit at”) by citing a crowd of ten males who “surrounded” and threatened him; however, there is no evidence in the video footage of such a crowd having formed by the time Police Officer Sidorskiy made this statement, and no evidence that he was surrounded or in danger at the times he made his other discourteous statements or threats of force towards § 87(2)(b) and § 87(2)(b).

Administrative Guide Procedure 304-10 defines a “false statement” as “an intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made” (Board Review 19). Intentionally making a false official statement is prohibited under the Administrative Guide.

Even if Police Officer Sidorskiy’s memory of the incident was impaired by the time that passed between the incident and his interview, he was shown video evidence of his conduct and the context of the incident and given opportunities to amend his previous untruthful statements. However, Police Officer Sidorskiy still denied making many of the statements he is captured making in the video footage and insisted that there was a crowd of threatening civilians surrounding him and that this was the reason for his use of profanity towards the victims in this case. § 87(2)(g)

Allegations Not Pleaded

In his telephone interview, § 87(2)(b) stated that Police Officer Sidorskiy was “about to say the N-word” but caught himself when he realized that his BWC was on. Though Police Officer Sidorskiy did not fully use the word, § 87(2)(b) “heard it about to come.” Later in the interview, however, § 87(2)(b) said that Police Officer Sidorskiy may have mumbled the word “nigger.” None of the obtained video footage captures Police Officer Sidorskiy using this word. Due to the conflicting nature of § 87(2)(b) own statement as to whether Police Officer Sidorskiy used this word, and the fact that no video footage captures Police Officer Sidorskiy doing so, no allegation of Offensive Language: Race was pleaded.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 14).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 15).
- Police Officer Michael Sidorskiy has been a member of service for 19 years and has been a subject in 27 additional CCRB complaints and 80 additional allegations, of which four were substantiated in three cases:
 - 201807856 involved a substantiated allegation of a vehicle search against Police Officer Sidorskiy. The NYPD imposed formalized training.
 - 201901096 involved substantiated allegations of failure to provide RTKA card and

- 201910803 involved a substantiated allegation of refusal to provide shield number. The NYPD imposed command discipline A.
- § 87(2)(g)

- This case was unable to be mediated due to an Agency moratorium on mediations.
- As of October 14, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 16)

[illegible]